

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JUSTIN PULLIAM,

Plaintiff,

v.

Civil Action No. 4:22-cv-4210

COUNTY OF FORT BEND, TEXAS;
SHERIFF ERIC FAGAN, in his
individual capacity; OFFICER ROBERT
HARTFIELD, in his individual capacity;
OFFICER JONATHAN GARCIA, in his
individual capacity; OFFICER TAYLOR
ROLLINS, in his individual capacity;
and OFFICER RICKY RODRIGUEZ, in
his individual capacity,

Defendants.

**PLAINTIFF’S ADVISORY TO THE COURT
FOLLOWING MEMORANDUM AND RECOMMENDATION**

Plaintiff Justin Pulliam files this advisory to (1) let the Court know that he has no objections to Judge Edison’s Memorandum and Recommendation (“M&R”) of September 5, 2024 (Dkt. 77) and (2) address this case’s status.

1. Plaintiff does not object to the recommendation that “Pulliam’s motion for partial summary judgment be **GRANTED** as to Fagan and Fort Bend County’s liability on Pulliam’s free speech and equal protection violation claims arising from

the July 2021 press conference. A jury trial on these claims should address only damages.” Dkt. 77 at 23.

2. Plaintiff does not concede that the M&R’s reasoning is correct in concluding that the dismissal of Defendant Hartfield is appropriate, but, in the interest of simplifying proceedings, Plaintiff does not object to (and therefore consents to) the recommendation that “Pulliam’s free speech violation claim against Hartfield be **DISMISSED** *sua sponte* because Hartfield is entitled to qualified immunity.” *Id.* at 23.

3. Plaintiff does not object to the recommendation that “Pulliam’s motion for partial summary judgment as to his First Amendment retaliation claims against Rollins and Fort Bend County be **DENIED**.” *Id.* at 23. Plaintiff does not object to Judge Edison’s conclusion that there should be trial on whether Defendant Rollins had probable cause to arrest Plaintiff on December 21, 2021: “If Rollins needed Pulliam to stand across the street for security purposes, a jury should weigh in on the veracity of that explanation.” *Id.* at 22.

4. Judge Edison also noted that the parties did not brief the effect, if any, of the Supreme Court’s recent decision in *Gonzalez v. Trevino*, 144 S. Ct. 1663 (2024). *Id.* at 22–23. Plaintiff respectfully suggests that the best place for that briefing is post-trial after the facts concerning probable cause for the arrest have been established.

5. In summary, Plaintiff does not object that: (1) summary judgment is appropriate in his favor against Defendants Fagan and Fort Bend County as to liability on Plaintiff's First Amendment and equal protection claims relating to the July 2021 press conference; (2) dismissal of Defendant Hartfield is acceptable; (3) summary judgment be denied concerning Plaintiff's arrest in December 2021; (4) a trial be scheduled at the Court's earliest convenience on liability for the arrest claim and damages for the press-conference claims, and damages (if liability is in Plaintiff's favor) on the arrest claim; and (5) the parties should brief *Gonzalez* as part of the post-trial briefing.

6. Plaintiff notes that the M&R did not address final remedies, including declaratory and injunctive relief. To the extent the Court ultimately finds Defendants liable to Plaintiff on any claim, Plaintiff expressly preserves his right to seek declaratory and injunctive relief as part of the final judgment.

7. Plaintiff will separately respond to any objections the Defendants file.

Dated: September 19, 2024

Respectfully submitted,

/s/ Christen Mason Hebert

Christen Mason Hebert, Attorney-in-
Charge Texas Bar No. 24099898

Federal ID No. 3844981

Jeffrey Rowes*, of counsel

Texas Bar No. 24104956

INSTITUTE FOR JUSTICE

816 Congress Ave., Suite 970

Austin, TX 78701

(512) 480-5936

chebert@ij.org

jrowes@ij.org

Jared McClain*, of counsel

D.C. Bar No. 1720062

INSTITUTE FOR JUSTICE

901 N. Glebe Rd., Suite 900

Arlington, VA 22203

(703) 682-9320

jmcclain@ij.org

Attorneys for Plaintiff

**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2024, a true and correct copy of the foregoing document was filed with the Clerk of Court using the CM/ECF system and served upon all counsel of record.

/s/ Christen Mason Hebert

Christen Mason Hebert, Attorney-in-Charge

Attorney for Plaintiff